BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
CENTRAL RESOURCES, INC., I.D.
NO. 3939, PROTEST TO DENIAL OF
CLAIM FOR REFUND. No. 96-23

DECISION AND ORDER ON SUMMARY JUDGMENT

This matter comes on for determination upon the Motion for Summary Judgment filed on June 28, 1996 by the Taxation and Revenue Department (hereinafter "Department"). Regulation TA 24:12 provides for a twenty day period following service of a motion by mail for an opposing party to answer any motion or the opposing party shall be deemed to have consented to the granting of the relief asked for in the motion. No response has been filed by Central Resources, Inc. (hereinafter the "Taxpayer"). On August 23, 1996, the Department filed a Motion for Decision Upon the Record herein, and the Taxpayer has also failed to file any response to said Motion. In the absence of any answers from the Taxpayer, the Department's statement of undisputed facts is accepted as true. Based upon those facts and the arguments presented, IT IS DECIDED AND ORDERED as follows:

FINDINGS OF FACT

1. Following a desk audit, the Department issued Assessment No. 1638 to the Taxpayer, assessing $3,544.42 in natural gas processors tax, $771.75 in interest and $354.46 in penalty for the September, 1993 through August, 1995 reporting periods.

2. On February 2, 1996, the Taxpayer paid Assessment No. 1638 and filed a claim for refund of said payment.

3. On February 23, 1996, the Department denied the Taxpayer's claim for refund.

4. On March 22, 1996, the Taxpayer filed a written protest to the Department's denial of its claim for refund.

5. On February 15, 1996, the Department issued Assessment No. 1639 to the Taxpayer, assessing $4,758.76 in natural gas processors tax, $1,875.14 in interest and $475.87 in penalty for the June, 1993 through August 1993 reporting periods.

6. On February 6, 1996, (based on the audit findings and before the assessment was generated) the Taxpayer paid Assessment No. 1639 and filed a claim for refund of said payment.

7. On April 1, 1996, the Department denied the Taxpayer's claim for refund.

8. On May 2, 1996, the Taxpayer filed a protest to the Department's denial of its claim for refund.

9. During all aspects of processing, the Taxpayer was the owner of the natural gas upon which the Department's assessments of natural gas processors tax was imposed.

10. The Taxpayer contracted with two gathering services, El Paso Field Services ("El Paso") and Williams Field Services ("Williams") to gather the Taxpayer's gas and deliver it to processing plants which are owned by El Paso and Williams and which were downstream from the production units where the gas was produced. After processing, the Taxpayer took redelivery of the gas at the tailgates of the processing plants.

11. El Paso delivered the Taxpayer's gas to the Blanco/Chaco processing plant, which El Paso Owns. El Paso charged the Taxpayer a fee for gathering the gas and for the extraction of carbon dioxide and liquids. El Paso credited the value of the liquids extracted from the Taxpayer's gas against the costs of gathering the gas.

12. Williams delivered the Taxpayer's gas to the Milagro plant which Williams owns. Williams charged the taxpayer a fee for gathering and for the extraction of carbon dioxide from the Taxpayer's gas. No other liquids are manufactured or refined by the Milagro plant.

13. The taxpayer did not sell the carbon dioxide extracted from the processed gas.

14. Since at least 1985, the Department's instructions to the natural gas processors tax report have stated that every person having an interest in products processed at a New Mexico

plant is liable for the natural gas processors tax to the extent of his interest in those products.

DISCUSSION

The Taxpayer disputes its liability for Natural Gas Processors Tax ("NGPT"). Its first argument is that, although it is the owner of the natural gas being processed, it is neither engaged in the business of processing gas nor is it a processor of natural gas, and thus, it is not liable for NGPT. This argument is based upon the language of Section 7-33-4 of the Natural Gas Processors Tax Act, §§7-33-1 through 7-33-8 NMSA 1978. Specifically, the Taxpayer relies upon the language of § 7-33-4(A) which provides:

There is levied and shall be collected by the oil and gas accounting division of the taxation and revenue department, a privilege tax on processors for the privilege of engaging in the business of processing based on the value of their products. The measure of the tax shall be forty-five one-hundredths of one percent of the value of the products.

The Taxpayer also relies upon the definition of "processor" as found at §7-33-2(B) which provides:

"processor" means a person who:

(1) processes natural gas or processes hydrocarbons incidental to the processing of natural gas; or

(2) extracts by-products from natural gas or other hydrocarbons incidental to the processing of natural gas, individually or any combination thereof. "Processor" does not mean a person who refines or processes oil, natural gas or liquid hydrocarbons or extracts by-products therefrom through a process which is commonly considered a field or lease operation, such as well-head separation, dehydration, purification, desulfurization compression or trapping;

Admittedly, a literal reading of only subsection A of §7-33-4 supports the Taxpayer's contention that the NGPT is imposed only upon "processors" who are engaged in the business of processing natural gas. This reading, however, completely ignores the language of subsection C of that same statute. Section 7-33-4(C) provides as follows:

Every interest owner is liable for this tax to the extent of his interest in the value of such

products or to the extent of his interest as may be measured by the value of such products.

Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law.

This subsection clearly provides that every interest owner is liable for this tax to the extent of his interest in the value of the products. Although interest owner is not defined in the NGPT Act, giving the term its plain meaning as one who owns an interest in the products processed, Subsection C cannot be reconciled with the interpretation given by the Taxpayer to subsection A[1]. Statutes are to be construed so as to give effect to all of their provisions, and to reconcile different provisions so as to make them consistent and harmonious. *Mathieson v. Hubler*, 92 N.M. 381, 588 P.2d 1056 (Ct. App. 1978). Subsection C would be meaningless if the Taxpayer's interpretation of the NGPT were to be accepted. Since it is fair to infer that the legislature did not intend to enact a meaningless provision of law, it must be concluded that Subsection C means what it says and that the NGPT is applicable to the Taxpayer as an interest owner of the natural gas which was processed.

The Taxpayer next argues that removal of carbon dioxide in order to meet the requirements for pipeline transportation is not processing. Processing is not specifically defined in the NGPT Act, although "processor" is defined to include a person who "extracts by-products from natural gas...incidental to the processing of natural gas." Section 7-33-4(B)(2). Since carbon dioxide is a by-product, this definition would appear to cover the removal of carbon dioxide as is done to the Taxpayer's natural gas.

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[1] Although not defined in the NGPT Act, "interest owner" is defined in New Mexico's other oil and gas taxes, specifically, Sections 7-29-4(B), 7-30-4(A), 7-31-4(B) and 7-32-4 as follows:

a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment which is determined by the value of such products.

I believe it is reasonable to draw on this definition as well, since I believe it reasonable to interpret the state's various and gas taxes *in pari materia*, since they deal with the same subject matter. Under this definition, it appears that the Taxpayer qualifies as an interest owner.

Additionally, the Department, in TRD Ruling 542-95-1 has specifically ruled that the removal of carbon dioxide and water from natural gas constitutes processing under the NGPT Act.

The facts forming the basis of that ruling request are:

X is an oil and gas well owner/operator in New Mexico. A certain portion of the gas produced by X is "dry gas", which has a low BTU content and contains significant amounts of carbon dioxide and water.

. . .

Fact Situation 2:

After gathering, but before being put into the transmission pipeline, the gas must be stripped of carbon dioxide and water to meet the pipeline's specifications. ... X maintains that facilities of this type only perform dehydration and purification.

The ruling requestor posed the question, "Does this subject the owner of the gas to the natural gas processor's tax?"

In answering this question, the Department recognized that the NGPT Act does not specifically define processing, and the ruling analysis relies on the industry definition contained in H. Williams & C. Myers, Manual of Oil & Gas Terms, 850 (8th ed., 1991):

"Processing" means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling dehydration, and compression are not considered processing.

The ruling concludes that "[t]he extraction or removal of carbon dioxide and water from natural gas qualifies as processing for purposes of the Natural Gas Processors Tax Act." It further ruled specifically on the question posed, stating:

The large centralized facilities used to remove water and carbon dioxide from dry gas are processing plants. The equipment making up these plants is not commonly found servicing individual wells in the field or on the lease.

. . .

The owners of natural gas that is processed in a centralized facility designed to remove water, carbon dioxide or other impurities from the gas are subject to New Mexico's natural gas processors tax.

Substantial weight is to be accorded to the interpretation given a statute by the agency which enforces that law. *State ex rel. Battershall v. City of Albuquerque*, 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989). Moreover, any ruling by the Department is presumed to be a proper implementation of the provisions of the laws that are charged to the Department. Section 9-11-6.2(G) NMSA 1978 (1996 Cum. Supp.)

Finally, the Department's conclusion is also supported by the New Mexico Supreme Court's decision in *Pan American Petroleum Corporation v. El Paso Natural Gas Company*, 82 N.M. 193, 477 P.2d 827 (1970). In that case the gas owner, El Paso, asserted that the gas had to have harmful constituents removed in order to be accepted by the gas transmission lines or to avoid injury to the ultimate consumer. El Paso argued that it bought the product as natural gas and sold it as such, "without materially affecting it in such a was as to constitute manufacturing." The court held, under the definition of "manufacturer," which closely tracks the definition of "processor" in the NGPT Act, that El Paso's removal of impurities constituted manufacturing. *Id.*, 82 N.M. at 197, 477 P.2d at 832. Given this substantial authority, it is concluded that the removal of carbon dioxide at the Milagro and Blanco/Chaco plants constitutes "processing" for purposes of the NGPT Act.

Lastly, the Taxpayer argues that the NGPT is imposed only on the value of the extracted products to which it retains title, and not on the value of all of its natural gas and products going through the plant. The Taxpayer maintains that because El Paso receives the liquids extracted from the Taxpayer's gas as a credit toward the cost of El Paso's gathering services, the Taxpayer's liability for NGPT is limited to the value, which is zero, of the carbon dioxide extracted from the natural gas at the Blanco/Chaco plant. Similarly, the Taxpayer argues that because it receives no value for the carbon dioxide extracted at the Milagro plant, there is no basis for imposing NGPT.

This argument ignores the language of § 7-33-2(C) which explicitly defines "product" to include both the natural gas and the products extracted from the gas. In pertinent part, it provides:

> "product" means natural gas or liquid hydrocarbons, individually or any combination thereof, which has been processed by the processor or any by-product which has been derived therefrom by the processor.

Reading this definition into § 7-33-4(C), which imposes NGPT upon every interest owner "to the extent of his interest in the value of such products or to the extent of his interest as may be

measured by the value of such products," it is clear that the tax is assessed on the total value of the natural gas and the by-products of the gas which the Taxpayer owned during processing.

Finally, the Taxpayer's construction of the NGPT also runs afoul of the Department's long standing interpretation and application of the tax as reflected in the Department's instructions for reporting the tax. These instructions are presumed to be a proper implementation of the laws administered. Section 9-11-6.2(G) NMSA 1978. The legislature is presumed to know of the actions taken by administrative agencies of the state. *State el rel. Stratton v. Roswell Independent Schools*, 111 N.M. 495, 502, 806 P.2d 1085, 1092 (Ct. App. 1991). Thus, the more longstanding the agency's interpretation of the statute without amendment by the legislature, the more likely that the agency's interpretation reflects the legislature's intent. *In re Application of Sleeper*, 107 N.M. 494, 760 P.2d 787 (Ct. App. 1988). Given the Department's longstanding interpretation of the NGPT, it must be presumed that if the legislature thought that the Department was misapplying the NGPT, it would have amended the statute to clarify its intent. Accordingly, the weight of authority supports the Department's interpretation of the NGPT and the Taxpayer's protest should be denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed timely, written protests to the Department's denial of its claims for refund and jurisdiction lies over both the parties and the subject matter of this protest.

2. As an interest owner of natural gas which it has processed, the Taxpayer is subject to the natural gas processors tax pursuant to §7-33-4(C) NMSA 1978.

3. The removal of carbon dioxide from natural gas at a processing plant is "processing" which is subject to the natural gas processors tax.

4. The natural gas processors tax is applied to the value of both the natural gas and any by-products removed from the natural gas.

For the foregoing reasons, the Taxpayer's protest IS HEREBY DENIED.

DONE, this 27TH day of September, 1996.